

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1399

To be argued by
DAVID J. GOTTLIEB

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

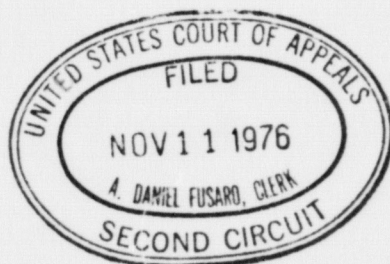
ERIC ELWOOD MOORE,

Defendant-Appellant.

Docket No. 76-1399

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
ERIC ELWOOD MOORE
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

DAVID J. GOTTLIEB,
Of Counsel.

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MOORE, ERIC ELWOOD

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Threats to the President, U.S.

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10-6-75

H. KEY DATES & INTERVALS

ARREST or	INDICTMENT X	ARRAIGNMENT	TRIAL	SENT
U.S. Marshal Date 10-4-75	Indictment Date 2-27-76	Arraignment Date 03-08-76	Trial Date 01-07-76	Sent Date 01-07-76
Summons Served	First Appearance	In Charging District	Understanding Indictment	Disposition

Search Warrant	Issued	Return	Summons	Issued	Served	Arrest Warrant	Issued	Arrested	Complaint	Date	Initialing	Magistrate	Initial Appearance Date	Preliminary Examination	Date	Oral Hearing	Date	Final Hearing	Date
									COMPLAINT	10-6-75	HJR-080D		10-6-75		10-6-75				
									OFFENSE	18 USC 871(a)	threatening the life of the president								

U.S. Attorney

Marc Marmaro, AUSA,

(212) 791-1941

ATTORNEYS

DATE	DOCUMENT NO.	PROCEEDINGS
2-27-76		Filed indictment.
3-1-76		Filed writ of H/C ad Pros. Issued and ret. 3/8/76.
3-8-76		Deft. (Atty. present) does not plead. Court directs entry of not guilty plea. (Jail on Writ). Deft. continued remanded in lieu of bail fixed at \$5,000 cash or surety. Case assigned to Werker, J...Pollack, J.
03-10-76		Filed govts. notice of readiness for trial.
03-15-76		Filed the following papers rec.d. from the office of Mag. Ra: docket sheet; complaint; disposition sheet; financial affdt; temporary commitment; and motion for speedy trial or for dis of all charges.
03-30-76		Filed govts. affdt. of Marc Marmaro.

BEST COPY AVAILABLE

4-5-76 Filed govts. w/h/c--is satisfied on 3/3/76. W. Werker, J.

4-30-76 PTC held. Govt. to notify court. Werker, J.

5-19-76 PTC held. Deft. and Atty. w/ausa also present. Deft. requests hearing. Granted to be held on May 24, 1976 at 2pm. Deft. requests confinement in Bellevue Hospital--denied; court directs marshal to let Warden know of this request. Werker, J.

5-25-76 Filed defts. affdc. and notice of motion for suppression of hearing, ret. on: May 24, 1976.

5-24-76 Deft. and atty. Curley with AUSA Bentley present. Suppression hearing begun and adj. to June 2, 1976 at 4:30pm. Werker, J.

6-2-76 Hearing contd. and concluded.---Denied. Werker, J.

5-11-76 Filed OPINION # 44565--....I will consequently suppress the articles of clothing seized as having been illegally seized. So ordered, Werker, J. mn

6-21-76 Filed defts. affdt. and notice of motion for an order granting reargument of an order filed on June 11, 1976 insofar as said order suppressed certain tangible evidence seized from defts. car.

7-7-76 Filed waiver of trial by jury (consented to) Werker, J. *Hearing began*

7-7-76 Deft. and atty. John Curley, present. Hearing becomes part of non-jury trial. Trial continues and concluded. Court finds deft. Guilty. PSI ordered. Sentence adj. to Aug. 14, 1976 at 2pm in rm. 2704. Werker, J.

7-12-76 Filed govts. memorandum of law in support of motion to reargue order filed on June 11, 1976.

7-19-76 Filed transcript of record of proceedings dtd. 5/24/76.

7-19-76 Filed transcript of record of proceedings dtd. 7/19/76.

~~7-19-76 Filed JUDGMENT and ORDER. The deft. is hereby committed to the... Two (2) Years, pursuant to Title 18, United States Code Section 4502(a). Execution of sentence is suspended and the deft. is placed on probation for a period of Two (2) Years, subject to the standing Probation order of this Court, and further subject to the special condition that the deft. cooperate with Probation Department and have immediate involvement in Alcoholics Anonymous or a similar program during his period of probation. Werker, J. (copies issued)~~

08-24-76 Filed JUDGMENT and order (Atty. present) that the deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS, pursuant to T. 18, US Code, Sec. 4502(a). Execution of sentence is suspended and the deft. is placed on probation for a period of TWO (2) YEARS, subject to the standing probation order of this court, and further subject to the special condition that the deft. cooperate with the Probation Department and have immediate involvement in Alcoholics Anonymous or a similar program during his period of probation. == Werker, J. (copies issued)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :

-v- :

ERIC ELWOOD MOORE, :

Defendant. :

INDICTMENT

76 Cr.

-----X
The Grand Jury charges:

On or about the 4th day of October, 1975 in
the Southern District of New York, ERIC ELWOOD MOORE,
the defendant, unlawfully, wilfully and knowingly did
make an oral threat to take the life of and to inflict
bodily harm upon, the President of the United States.

(Title 18, United States Code, Section 871(a).)

Vince M. Herman
FOREMAN

Thomas J. Cahill
THOMAS J. CAHILL
United States Attorney

MICROFILM
FEB 27 1976

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

ERIC ELWOOD MOORE,

Defendant.

INDICTMENT

76 Cr.

18 USC § 871(a)

THOMAS J. CAHILL

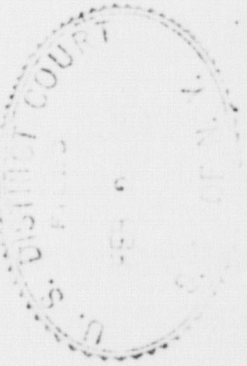
United States Attorney.

A TRUE BILL

W. J. Gorman

Foreman.

FPI-SS-2-10-71-20M-6950



FEB 27 1976

Filed Indictment. Tenney

MAR 8 1976

Deft (Atty John Curley) present, does not plead. Court directs entry of not guilty plea. (Jud on Mot)

Deft continued removed on basis of Bail fixed at \$500 cash surety.

Case assigned to Judge Werker

Apr 30 1976

P.T.C. - Court to Notify Court. JUDGE WERKER

MAY 19 1976

Deft (ADVA MARMARO Atty) present, P.T.C. Deft requests Hearing. Granted - May 24, 1976 at 2 PM.

Deft requests commitment in Bellevue Hospital - Denied

Court directs Marmaro to let Wanders at MCC know of this request.

JUDGE WERKER

MAY 24 1976

Deft Eric E. Moore, HUSA Bentley, John P. Curley, Esq. present

Suppression Hearing began & adjourned to June 2 at 4:30 PM

JUN 2 - 1976

Hearing continues & concluded. - Denied

HON. HENRY F. WERKE

U.S.D.

over

JUL 7 - 1976

d
Deft Eric S. Moore, HUSA Bentley + John P. Carley, Esq. present. Waiver
of Trial by Jury signed. Hearing becomes part of Non-Jury Trial.
Trial continues & concludes. Court finds Deft. GUILTY. P.S.M.
Sentence set to Aug 24, 1976 at ~~10~~ 2 P.M. in 2704, WERKER.

8-25-76 Sentence imposed for deft.
d Deft. Duane Hatt, John P. Carley, present.
Deft. sentenced for a period of 2 years. Imposition
of Sentence suspended under Title 18 Section 2
Deft. placed on Probation for a period of 2 years.
Special conditions
Deft. cooperate with Probation Dept. and
institute treatment or A.A. or similar Prog.

Weker, J.

2 used and therefore a prosecution of that incident could not
3 be proven beyond a reasonable doubt.

4 Can the government then add on different counts
5 which are on the basis of reiteration or confessions based
6 upon that and get convictions on those later incidents?

7 THE COURT: I think we have settled it that there
8 is no confession involved here.

9 All right, Mr. Curley. If you have anything
10 else let me hear it.

11 MR. CURLEY: Nothing further, your Honor.

12 THE COURT: All right.

13 My reading of the statute is pretty plain and
14 I think the statute itself is pretty plain and I do not want
15 to read anything into it.

16 I find here that the defendant is guilty of
17 knowingly and willfully having made a threat against the
18 President of the United States.

19 I do not find any merit in the argument that there
20 was a confession rather than a reiteration of the statement as
21 a separate and distinct violation of Section 871-81 U.S.C.

22 I do not find any merit in the argument that this
23 defendant was entrapped, because as the record will reflect and
24 had reflected, the question by Special Agent Kehoe, was a
25 wide open question which the defendant here could easily, and

perhaps more easily, have denied and said, "I have no interest in the President of the United States."

On the contrary, he said that he had been planning to assassinate the President, and I find that to be the crime defined in Section 871, and consequently, find the defendant guilty beyond a reasonable doubt.

I will set sentencing in this matter for the 17th of August at 2 o'clock in the afternoon.

MR. CURLEY: May I be heard on that, your Honor?

THE COURT: Yes, Mr. Curley.

MR. CURLEY: I have a problem and a suggestion.

The problem is that I plan to be away I think the first three weeks in August.

The suggestion is related to a problem that Mr. Moore has. He has advised me he is having a very difficult time at the Metropolitan Correction Center. I don't know your Honor's schedule for the rest of the month, but your Honor will recall --

THE COURT: My schedule for the rest of the month is to be away until the 16th of August. You are going to have some difficulty, it would seem to me, in getting a pre-sentence report.

MR. CURLEY: The Judge in North Carolina had a study conducted.